



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आज़ादी का  
अमृत महोत्सव

**By Regd. Post**

DIN No.: 20230364SW0000323373

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/202/2022-APPEAL / 9293-92
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-141/2022-23 and 07.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	10.03.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/ST/PARAS MANI TRIPATHI/129/2022-23 dated 14.06.2022 passed by the Deputyt Commissioner, CGST & C.Ex., Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Assistant/Deputy Commissioner, CGST & CE, Division-Kalol, Gandhinagar Commissionerate, 2 <sup>nd</sup> Floor, Janta Super Market, Kalol, Gandhinagar-382715
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Deepkumar Pravinbhai Delvadiya (PAN- BVYPD9637A), 49, Indralok Society, Opp. ESIV Hospital, Kalol, Gandhinagar, Gujarat-382721

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-  
ibid :-



(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

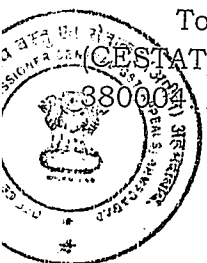
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad:  
In case of appeals other than as mentioned above para.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है। Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशिय;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

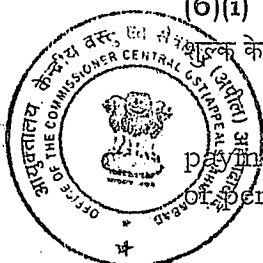
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

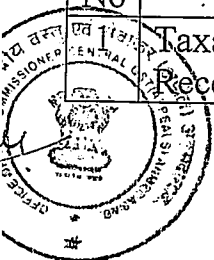


अपीलिय आदेश / ORDER-IN-APPEAL

The Assistant Commissioner, CGST & Central Excise, Kalol Division, Commissionerate - Gandhinagar (hereinafter referred to as the 'Appellant Department'), in pursuance of the Review Order No.11/2022-23 dated 16.09.2022 issued under Section 84 of the Finance Act, 1994 from F.No. GEXCOM/REV/ST/OIO/19342/2022-REV-O/o COMMR-CGST-GANDHINAGAR by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal against the Order-in-Original No.KLL DIV/ST/PARAS MANI TRIPATHI/129/22-23 dated 14.06.2022 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner, CGST, Mehsana Division, Commissionerate - Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s. Deepkumar Praveenbhai Delvadiya, 49, Indralok Society, Opp ESIC Hospital, Kalol, Dist.: Gandhinagar (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent was holding Service Tax Registration No. BVYPD9637ASD001 for providing services falling under the category of Contractor (Others). Based on the information received from the Income Tax department, discrepancies were observed in the total income declared in the ITR as compared to the ST-3 returns of the respondent for the period F.Y. 2015-16. Letters dated 16.07.2019, 13.06.2020 and 06.07.2020 were issued to the respondent requesting them to provide documents like Balance Sheet, Profit & Loss Account, Income Tax Returns, Form-26AS and Sales Ledger for the F.Y. 2015-16 to verify whether they had discharged their Service Tax liabilities properly. However, they did not respond. It appeared to the jurisdictional officers that the nature of activities carried out by the respondent as per the Income Tax data were covered under the definition of service and hence they were liable to levy of Service Tax at appropriate rate. Accordingly, the differential Service Tax payable by the respondent was determined on the basis of difference between the value of "Sales/Gross Receipts (derived from Value reflected in ITR)" as provided by the Income Tax Department and the taxable value declared in their ST-3 returns for the Financial Year 2015-16 as below:

Sr. No	Details	F.Y. 2015-16 (in Rs.)
	Taxable Value as per Income Tax Data i.e Sales/Gross Receipts from Services (as per ITR)	3,23,48,052/-



2	Taxable Value declared in ST-3 Returns	1,56,51,562/-
3	Difference of Value mentioned in 1 & 2 above (Sr.No.1 – Sr.No.2)	1,66,96,490/-
4	Amount of Service Tax payable including Cess (@14.5%)	24,20,991 /-

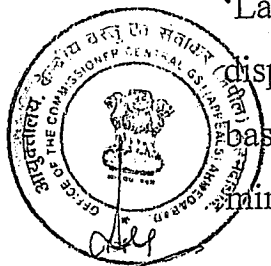
2.1 A Show Cause Notice was issued to the respondent from F.No. GEXCOM/SCN/ST/1122/2020-CGST-DIV-KLL-COMMRTE-GANDHINAGAR dated 20.10.2020 (in short SCN) vide which it was proposed to demand and recover Service Tax amounting to Rs.24,20,991/- under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 and penalties were proposed under Section 70 and 78 of the Finance Act, 1994 (FA, 1994).

2.2 The SCN was adjudicated by the adjudicating authority vide the impugned order, wherein the demand of Service Tax amounting to Rs.24,20,991/- was dropped alongwith interest and penalty.

3. Being aggrieved with the impugned order, the Appellant Department has preferred this appeal on the grounds as mentioned in the subsequent paragraphs, with a request to set aside the impugned order.

3.1 The proceedings initiated by the SCN was dropped on the basis that the respondent has received the differential taxable income of Rs.1,66,96,490/- for the F.Y. 2015-16 for rendering 'Manpower Supply Service' to a Body Corporates viz. M/s Rushil Décor Ltd, hence, 100% Service Tax liability was on the service recipient under Reverse Charge Mechanism in terms of Notification No. 30/2012-ST dated 22.06.2012, as amended vide Notification No. 07/2015-ST dated 01.03.2015.

3.2 The decision of the adjudicating authority holding the services of the respondent in the nature of Manpower Supply and thereby extending the benefit of 100% RCM vide Notification No. 30/2012-ST dated 22.06.2012 as amended is perverse and in the wrong perspective of the statutes. Upon going through the Agreement No.GA/N/05 dated 27.03.2016 executed between the respondents and service recipient i.e M/s Rushil Décor Ltd, it is observed that the agreement is for 'Labour Contract for manufacture of agreed upon loads of laminated sheets and dispatch thereof'. The payment was required to be done by the service recipient based on the deployment of resources and fulfillment of the obligations of minimum loads agreed upon which would be determined on the basis of

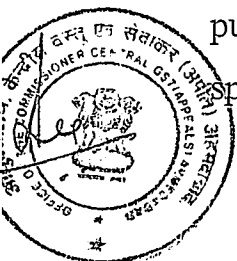


attendance. The contract value was inclusive of all statutory liabilities towards Service Provider's labour including PF/ESIC/Workmen Compensation Act, etc. The conditions of the contract read with the definition of supply of manpower under Rule 2(1)(g) of the Service Tax Rules, 1994 makes it evident that the service provider do not have any control/superintendence on the manpower deputed by them. Hence, respondents were not providing Manpower Supply Service but were providing Labour Services through manpower engaged under its control and supervision to carry out the specific jobs. Since the services provided by the respondent cannot be classified under 'Supply of Manpower Service', therefore, they are not eligible for any RCM benefit.

3.3 The adjudicating authority has misconstrued by considering the services rendered by the respondent under 'Supply of Manpower Service' and passed the order for setting aside the demand of Rs.24,20,991/- raised vide SCN dated 20.10.2020 by extending the benefit of RCM which is not legal and proper and deserves to be set aside and pass any order as deemed fit in the interest of justice.

4. A cross-objection to the appeal was filed by the respondent on 18.01.2023 wherein they submitted that:

- The respondents have supplied manpower to the service recipient – M/s Rushil Décor Ltd. under an agreement and their services are correctly classifiable under 'Manpower Supply Service'.
- Bills were raised by the respondents on their customers on monthly basis for providing Manpower Supply. Their services conformed to the provisions of the Contract Labour (Regulation & Abolition) Act, 1970. The nature of job mentioned as loading, unloading, cutting, sanding does not alter the nature of the services provided by the appellant.
- The agreements which were executed by the respondent company were not for carrying out job work and camouflage the supply of manpower services. The provisions of the agreement executed by the respondent indicate that respondent was required to cover the supply of manpower services to company as distinct from the performance of job-work. The contracts are pure labour contracts in which there is a conspicuous absence of details or specifications pertaining to the work which is to be performed, the output to



be generated, and delivery schedules, among other crucial elements of a genuine contract for job-work.

- The personnel engaged by the respondent were under their supervision and control and they were holding the discretion to recruit personnel of their choice. The respondents also maintained various records and registers like attendance registers for the personnel supplied by them and also produced extract of the same from time to time. They were also responsible for payment of wages as per minimum wages regulations as applicable in the state of Gujarat and the mode of payment was also as per the Government regulations. They relied on the decision of CESTAT Mumbai in the case of *M/s Adiraj Manpower Services Pvt.Ltd. Vs Commissioner of Central Excise, Pune-II* in support of their contention.
- In terms of the amendment carried out vide notification No.07/2015-ST dated 01.03.2015 in respect of Manpower Supply and security services provided by an individual, HUF, or partnership firm to a body corporate, only service receiver were supposed to pay Service Tax as against the earlier system of partial reverse charge. In the case of the respondents, the service receiver, M/s Rushil Décor Ltd has paid the service tax and hence it amounts to double taxation.
- In support of their contentions they cited the following citations :
- Decision of Hon'ble Supreme Court in the case of Adiraj Manpower Services Pvt. Ltd. Vs Commr. of Cen.Ex., Pune-II reported as 2022 (58) GSTL 137 (SC).
  - Decision of CESTAT in the case of Popular Vehicles & Services Ltd. Vs Commissioner of Cen. Ex., Kochi reported as 2010 (18) STR 493 (Tri.Bang.)
  - Decision of CESTAT, WZB, Ahmedabad in the case of Dineshchandra R Agarwal Infracon Pvt.Ltd Vs CCE, Ahmedabad reported as 2010 (18) STR 39 (Tri.Ahmd).
  - Decision of CESTAT, SZB, Chennai in the case of Sakthi Auto Components Ltd. Vs Commissioner of C.Ex., Salem reported as 2009 (14) STR 694 (Tri.Chennai).



5. Personal Hearing in the case was held on 10.02.2023. Shri Vipul Khandhar, Chartered Accountant appeared on behalf of the respondent for hearing. He reiterated the submissions made in the cross-objection to appeal.

6. I have carefully gone through the facts of the case, grounds of appeal, the written submissions made by the respondent as well as submissions made at the time of personal hearing. It is observed that the issue to be decided in this case is whether the impugned order passed by the adjudicating authority, dropping the Service Tax demand of Rs. 24,20,991/- alongwith interest and penalties, is legal and proper or otherwise. The demand pertains to period F.Y. 2015-16.

7. I find that the SCN was issued on the basis of data received from Income Tax department. The respondents are registered with the department and had filed their ST-3 Returns during the period F.Y. 2015-16. The SCN has classified the services of the respondent under the category 'Contractor (Others)' and the demand has been raised on the basis of differential value of services appearing in the Income Tax Returns compared with the value shown in the ST-3 Returns filed by the respondent. However, upon verifying the ST-3 Returns submitted by the respondent alongwith appeal papers, it is observed that they have classified their services under the category of 'Manpower Recruitment /supply agency services' and they have also mentioned to claim abatement under Notification No.07/2015-ST under Sl No.1(ii)(B)(iii). Relevant portion of the Notification is reproduced below :

*GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)*

*New Delhi, the 1st March, 2015*

*NOTIFICATION No.7/2015-Service Tax,*

*G.S.R.(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-*

*1. In the said notification,-*

...

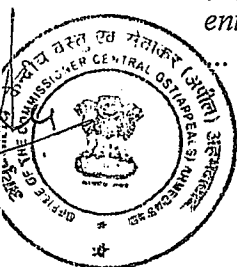
*(ii) in paragraph (II),-*

...

*(B) in the Table,-*

...

*(iii) against Sl. No. 8, in column (3) and column (4), for the existing entries, the entries "Nil" and "100%" shall respectively be substituted;*





It is clear that by virtue of the above amendment, the burden of Service Tax lies on the service receiver "in respect of services provided or agreed to be provided by way of supply of manpower for any purpose". Hence, the respondent had registered their claim for exemption/abatement from Service Tax in their ST-3 Returns and the same was not disputed by the department at the relevant time.

7.1. It is further observed that the SCN was issued for the differential value of services without verifying the above mentioned facts to the extent that details mentioned in the ST-3 Returns by the respondents were overlooked by the department. Therefore, I find that the SCN issued in the case was in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is reproduced as under :

...

*3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee*

...

Considering the facts of the case, I find that the SCN was issued indiscriminately and mechanically without appreciation of facts available on record and is vague.

7.2 I further find that the respondents were registered with the department and filed their ST-3 Returns in time as well as disclosed their eligibility for availing exemption/abatement in their Returns which were not disputed by the department during the relevant period. It is observed from the case records that the appellant had provided services to M/s Rushil Décor during the F.Y. 2015-16, which is evident from Form 26AS and the adjudicating authority has given finding in this regard at Para 25 of the impugned order. The respondent had filed ST-3 Returns for October, 2015 – March, 2016 declaring Rs.1,56,51,562/- as value of taxable services and liability of payment of tax was on the service receiver. This amount has been considered in the SCN for which there is no dispute either in the SCN or in the appeal filed by the department. Having accepted the payment of service tax under Reverse Charge mechanism for second half of the F.Y. 2015-16, I find there is no ground to question the liability for remaining period, when the services are



provided to same service recipient i.e M/s Rushil Décor. The department has not brought on record any evidence to the contrary.

8. It is the contention of the appellant department that Agreement No. GA/M/005 dated 27.03.2016 has mentioned the activities as 'Loading, Unloading, cutting, sanding etc., hence as per the agreement, the services rendered by the respondents cannot be classified under 'Manpower Recruitment/Supply service'. Therefore, the impugned order is required to be set aside. I find that the appellant department has erred in referring to the agreement dated 27.03.2016 which would cover the period ahead of the said date whereas the SCN covers the period F.Y. 2015-16. The department has not brought on record as to how this agreement is relevant for F.Y. 2015-16. Further, from the documents submitted by the respondent, it is found that the Additional Labour Commissioner's Office, Ahmedabad vide their letter dated 22.06.2015 have informed the appellant that '*As per their request, ceiling of Labours to be provided to M/s Rushil Décor Ltd., has been increased by 100 numbers in their Licence No.Ahmedabad/AMD/267-3/2015*'. The above communication from a Government department further establishes the fact that during the relevant period, the respondent (a Proprietorship firm) were engaged in the work of providing 'Labour' to M/s Rushil Décor Limited (a body corporate). Hence, it is undisputed that during the relevant period, the respondents being a Proprietorship firm, had provided services under 'Manpower Recruitment/Supply Agency Service' to a Body Corporate and therefore they are eligible for availing the benefit of payment of Service Tax by the Service Recipient under 100% Reverse Charge Mechanism. The contentions of the appellant department are legally not sustainable on facts as well as on merits.

9. The appellant department have further contended that the services provided by the respondent would fall under 'Labour Service' and not 'Manpower Supply Service'. In this regard, I find that the contentions of the department are not supported by any documents. It is observed from the Form-26AS submitted by the respondent that during the F.Y. 2015-16 an amount of Rs.3,22,95,381/- was credited under Section 194C of the Income Tax Act, 1961 against M/s Rushil Décor Limited. Further, a certificate dated 10.01.2023 of M/s Rushil Décor Limited is also available among the appeal papers vide which the 'Body Corporate' has confirmed that their company has paid service tax on RCM on Manpower Supply services received from the respondent firm. The sample copies



of Invoices raised by the respondent for the services rendered by them also confirm the fact that the respondents have not charged any service tax in their Bills/Invoices. The invoices also clarify the fact that the Labour Charges (manpower charges per hour) were raised in respect of number of labours deployed for different areas of work. Further, the assessment under reverse charge for October, 2015 – March, 2016 has not been disputed by the department. The service recipient during the entire period remains the same. Hence, the contention of the appellant department is devoid of any merits.

10. Hence, I find no merit in the contention of the appellant department that the services provided by the respondent included only labour service and hence they were liable for payment of service tax. As various facts and documents discussed in the foregoing para confirm the fact that the respondents are not liable for payment of Service Tax by virtue of the exemption/abatement vide Sr.No.8 of Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No.07/2015-ST dated 01.03.2015, and the element of 'Service Tax' in respect of the Services Provided by the respondent stands paid by the service receiver, therefore, it is held that the appeal filed by the department is devoid of any merit.

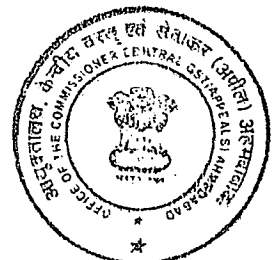
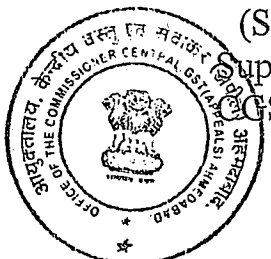
11. In view of the discussions made above, I find that there is no merit in the department appeal as regards the dropping of demand vide the impugned order. Hence, the appeal filed by the Appellant Department against the impugned order is dismissed being devoid of merits.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the department stands disposed of in above terms.

*Akhilesh Kumar*  
.. 7<sup>th</sup> March, 2023 ..  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Date: 07<sup>th</sup> March, 2023

Attested

(Somnath Chaudhary)  
Superintendent (Appeals)  
GST & CE, Ahmedabad



By Regd. Post A. D

1. The Deputy/Assistant Commissioner  
CGST, Division- Kalol,  
Commissionerate - Gandhinagar APPELLANT
2. M/s. Deepkumar Praveenbhai Delvadiya  
49, Indralok Society, Opp ESIC Hospital,  
Kalol, Dist.Gandhinagar RESPONDENT

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Deputy/Asstt. Commissioner, CGST, Division-Kalol, Commissionerate - Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Appeals, Ahmedabad  
(for uploading)
5. Guard file
6. PA File

